



[TRANSLATION]

Citation: *MB v Canada Employment Insurance Commission*, 2022 SST 103

## Social Security Tribunal of Canada Appeal Division

# Leave to Appeal Decision

**Applicant:** M. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated  
December 22, 2021 (GE-21-2366)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** March 2, 2022

**File number:** AD-22-29

## Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

## Overview

[2] The Applicant (Claimant) applied for special benefits to be able to care for his seriously ill partner.

[3] The Canada Employment Insurance Commission (Commission) denied the Claimant benefits because the medical certificate filed in support of his application did not mention that his partner's life was at risk as a result of illness or injury. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division found that the medical certificate the Claimant had submitted did not meet the criteria of the *Employment Insurance Act* (EI Act) and *Employment Insurance Regulations* (EI Regulations), so the Claimant was not eligible to receive the family caregiver benefit for adults.

[5] The Claimant now seeks leave from the Appeal Division to appeal the General Division decision. He says that the General Division made an error when it found that he did not meet the caregiver criteria and ignored the evidence that his partner was unable to live her life without help. He argues that he meets the caregiver criteria according to Revenu Québec [Quebec's taxation authority] (RQ). He says that, if his partner's life had been at risk, she would not have left the hospital and would not have needed his help.

[6] I have to decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[7] I am refusing leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

## Issue

[8] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

## Analysis

[9] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are the following:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[10] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case; he must instead establish that the appeal has a reasonable chance of success. In other words, he must show that there is arguably a reviewable error based on which the appeal might succeed.

[11] I will grant leave to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

### **Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?**

[12] The Claimant says that the General Division made an error when it found that he did not meet the caregiver criteria and ignored the evidence that his partner was unable to live her life without help. He argues that he meets the caregiver criteria according to

RQ. He says that, if his partner's life had been at risk, she would not have left the hospital and would not have needed his help.

[13] The Appeal Division has previously made decisions in similar cases.<sup>1</sup>

[14] The EI Act says that the family caregiver benefit for adults is payable to a family member of a "critically ill adult" who submits a medical certificate attesting to that fact.<sup>2</sup> It is an essential requirement to get this type of benefit.

[15] The EI Regulations clearly define what constitutes a critically ill adult. To meet that definition, **the patient's life must be at risk as a result of an illness or injury.**<sup>3</sup>

[16] It is true that the evidence before the General Division shows that the Claimant's partner needs assistance. However, as the General Division decided, the medical certificate the Claimant submitted does not meet the requirements of the EI Act and EI Regulations, since it shows that the patient's life is not at risk as a result of illness or injury.

[17] Unfortunately for the Claimant, the Federal Court has held that the requirements of the EI Act do not allow any discrepancy and provide the Tribunal with no discretion in its application.<sup>4</sup>

[18] I understand the Claimant's argument that the entitlement criteria in the EI Act are different from those established by RQ. However, any change to the EI Act has to come from Parliament.

[19] I find that the Claimant has not raised any question of fact, law, or jurisdiction that could justify setting aside the decision under review.

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<sup>1</sup> *MG v Canada Employment Insurance Commission*, 2019 SST 98; *MM v Canada Employment Insurance Commission*, 2019 SST 93.

<sup>2</sup> See section 23.3(1) of the *Employment Insurance Act*.

<sup>3</sup> See section 1(7) of the *Employment Insurance Regulations*.

<sup>4</sup> *Canada (Attorney General) v Lévesque*, 2001 FCA 304; *Pannu v Canada (Attorney General)*, 2004 FCA 90.

[20] After reviewing the appeal file, the General Division decision, and the Claimant's arguments in support of the application for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

## **Conclusion**

[21] Leave to appeal is refused. The appeal will not proceed.

Pierre Lafontaine  
Member, Appeal Division